SUPREME COURT, U.S.

AUG 31 1970

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970.

No.

INDIANAPOLIS NEWSPAPERS, INC.,
*Petitioner,*

*vs.*

ROBERT H. FIELDS,
*Respondent.*

## SEPARATE APPENDIX TO PETITION FOR WRIT OF CERTIORARI.

THOMAS M. SCANLON,
RAYMOND W. GRAY, JR.,
1313 Merchants Bank Building,
Indianapolis, Indiana 46204,
*Attorneys for Petitioner.*

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

## INDEX TO SEPARATE APPENDIX.


| | | PAGE |
|---|---|---|
| A. | The Publications Sued Upon | A1 |
| B. | Summary of Complaint (without Exhibits) and Answer | A172 |
| C. | Defendant's Motion for a Pretrial Order Ruling Inadmissible Evidence of Prior Ill Will | A183 |
| D. | Summary of Record as to Prior Ill Will Evidence Admitted and Objections Thereto | A185 |
| E. | Summary of Record as to Matters Admitted Into Evidence About Which Defendant Had No Pre-Publication Knowledge, and Objections Thereto | A198 |
| F. | Defendant's Motion for Directed Verdicts at the Close of All the Evidence | A203 |
| G. | Plaintiff's Final Argument to the Jury with Respect to the Ill Will Evidence and Objection Thereto | A204 |
| H. | The Trial Court's Instructions to the Jury and Objections Thereto | A206 |
| I. | Defendant's Tendered Instructions Which Were Refused by the Trial Court | A229 |
| J. | Chart Summarizing Trial Court Verdicts and Judgments on Each of 44 Complaint Paragraphs and Exhibits | A231 |
| K. | Defendant's Motion for New Trial and Memorandum in Support Thereof | A233 |
| L. | Defendant's Assignment of Errors to the Supreme Court of Indiana | A240 |
| M. | Questions Briefed by Defendant in Its Brief on Appeal to the Supreme Court of Indiana | A241 |

## Exhibit 1 (to Complaint Paragraph 1).

Complaint Exhibit 1 (Tr. 43-44; 2627; SR 33-34; SE 181)* is a copy of two articles published on October 27, 1965. Both were front page articles. One carried a large 8-column headline, "Deputy Accused in Death," a two-column sub-headline, "Ex-Inmate Says Reagan Beaten, Kicked in Jail," and reads as follows:

> A former inmate of the Marion County Jail charged yesterday that a prisoner who died of pneumonia brought on by a vicious beating had been attacked by an angry deputy sheriff. 1-1-7-1
>
> The sheriff's office had reported previously that the prisoner Elmer L. Reagan, 50 years old, was beaten viciously when he was put in a cell with a mental patient who later was charged with murder. 1-1-7-2
>
> The Marion County Grand Jury, Prosecutor Noble R. Pearcy and Dr. Robert C. Collins, coroner, began an investigation of the prisoner's charge after it was brought to light yesterday by The Indianapolis Star. 1-1-8-3
>
> The Prisoner testified before the jury last night after the prosecutor's office received a notarized statement telling of the deputy's attack before Reagan died Aug. 7. 1-1-8-4

---

* Record citations in this separate appendix are identified as follows:

"Tr. ...." refers to the transcript of the record and evidence in the trial court and, as filed with the Supreme Court of Indiana (in 8 volumes with pages consecutively numbered);

"SR ...." refers to the Summary of Record portion of Appellant's Brief to the Supreme Court of Indiana, separately bound.

"SE ...." refers to the Summary of Evidence portion of Appellant's Brief to the Supreme Court of Indiana, separately bound.

"App. Br. ...." refers to the Argument portion of Appellant's Brief to the Supreme Court of Indiana, separately bound.

All of such citations refer to portions of the Record before the Supreme Court of Indiana, as certified to by the Clerk of that Court and now lodged with the Clerk of this Court.

Reagan was beaten by the deputy July 14, the prisoner stated. 1-1-8-4

It was learned last night the prisoner was picked up at 4 p.m. by sheriff's detectives who tried to get a statement from him. He was questioned at the jail again after he appeared before the grand jury. 1-1-8-5

In both sessions with sheriff's investigators at the jail, the prisoner refused to give them a statement. He was released about 9:30 p.m. yesterday. 1-1-8-6*

The second-degree murder charge against the mental patient, William A. Brown, still is pending before the grand jury. 1-1-8-7

The prisoner said yesterday Reagan, 440 Massachusetts Avenue, was beaten by the deputy after Reagan asked for medicine. 1-1-8-8

"They had several arguments," the prisoner said. "Reagan said he wanted his medicine and the deputy told him he didn't have any medicine to give. Reagan called the deputy a name and the deputy unlocked the cage and grabbed Reagan." 1-1-8-9

The prisoner said the deputy told Reagan "You'll eat those words," and then kicked Reagan in the back. 1-1-8-10

"The deputy twisted Reagan's arm up behind him and began pushing him toward the basement door," the prisoner said. 1-1-8-11

When Reagan and the deputy disappeared through the door, another deputy followed them down the stairs, the prisoner said. Then he heard screams coming from the basement. 1-1-8-13

"The two deputies came up after about five minutes," the prisoner said, "and were followed by

* The numbers at the end of each paragraph of each exhibit were inserted by the plaintiff for purposes of reference. The first of such numbers designates the exhibit number; the second number designates the page of the newspaper on which such paragraph was found; the third number designates the column on such page; and the fourth number designates the paragraph number in such column. This was so alleged in the complaint. See, *infra*, p. A175.

a third deputy who must have already been in the basement." 1-1-8-12a

"In about an hour, the deputy who grabbed Reagan the first time went back down the stairs and I heard more screaming. It sounded like the man kept screaming 'Your're killing me—you're killing me,' and then the deputy came back up the steps." 1-1-8-13

The deputy did not return down the stairs until his shift was due to change that night, at 10:45 p.m. When he went down the stairs, he returned with two mental patients and put them in a cage where attorneys meet inmates, then brought Reagan upstairs and put him in the same cage, the prisoner stated. 1-1-8-14

"When the deputy brought Reagon upstairs, Reagan was all bent over and moaning and holding his midsection," the prisoner said. "The deputy called Reagan a 'contrary son of a b . . . .' and hit him in the —1-1-8-15—back of the neck and knocked Reagan into the attorney's cage and against a radiator. "The deputy stood over Reagan and said, 'You'll watch who you call a . . . . from now on' and then he kicked Reagan in the midsection; Reagan screamed when the deputy kicked him and kept crying to please get him a doctor. But pretty soon Reagan just laid there and when it got quiet I went to bed." 1-14-3-2

The prisoner said he learned the following morning that the deputy in charge of the third shift in the jail had sent Reagan to a hospital. "I learned later he died," he said. 1-14-3-3

The deputy accused of the beating conferred briefly with the third shift sergeant and then left, the prisoner said. 1-14-3-4

Reagan, who died in Marion County General Hospital, suffered 12 broken ribs and internal injuries. 1-14-3-4

His death and the sheriff's department account of the beating were not made public until The Star re-

ceived a tip to "investigate the death of a guy named Reagan from the jail." 1-14-3-5

On Aug. 11 a check of the case disclosed that the only official report available was an autopsy report from Dr. Marvin D. Dziabis, a deputy coroner, who said Reagan died of pneumonia brought on by a beating. 1-14-3-6

At that time there was no sheriff's report of the beating, Reagan's hospitalization, or who was suspected of beating him. An investigation was not started until the circumstances of the death were bared. 1-14-3-7

The murder charge was lodged against Brown, 24, 401 North Illinois Street, on Aug. 13, by sheriff's investigator James Mellene, who said four eye witnesses furnished him with evidence. 1-14-3-5

On Aug. 11, Capt. Richard Scott, chief jailer, said Deputy Jack Churchill, assigned to the jail, told him Reagan had been a cellmate of Brown's and that Churchill believed Brown was responsible for the beating. 1-14-3-9

But Scott gave no reason why Brown, described as a violent mental patient, was placed in the same cell with Reagan, who had been arrested on a drunkenness charge. 1-14-3-10

Pearcy and James E. Bath, grand jury deputy, said subpenas for all person's named in the prisoner's statement will be issued immediately. They include four deputies and seven prisoners. 1-14-3-11

Coroner's investigator Bethel E. Gaither said he never had been satisfied with the account of Reagan's death. He promised to investigate "every possible aspect" of the case with the grand jury. 1-14-3-12

He said there was sufficient evidence to have the coroner's office reopen the case and submit evidence to the jury. 1-14-4-1

Pearcy met for 25 minutes with Sheriff Robert H. Fields to inform him of the charges. Fields was visibly shaken when he left the meeting. He said he would